SUPREME COURT, U. S.

JAN 7 1974

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-5703

LOUIE P. WHEAT, VERNIE GRAVES, MAXINE GRAVES, MODDIE CARRILLO and all others similarly situated,

Petitioners,

vs.

JAMES M. HALL, as Secretary, Human Relations Agency, State of California; ROBERT B. CARLESON, as Director, Department of Social Welfare, State of California,

Respondents.

Answer to Petition for Writ of Certiorari

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REASONS FOR DENYING THE WRIT

1. The Petition is moot as the California Legislature has amended the statutes involved to eliminate the issues raised by petitioners.
2. The respondents have not acted to enforce the regulation in issue by the petition as it was enjoined by the trial court.

1. The Petition Is Moot as the California Legislature Has Amended the Statutes Involved to Eliminate the Issues Raised by Petitioners.

The Petition points out that the California Welfare Reform Act, effective October 1, 1971, amended section 11155 of the California Welfare and Institutions Code to provide a different method of valuing certain personal property. That method was expressed in departmental regulations, which resulted in this lawsuit.

On December 5, 1973, the Legislature passed, and the Acting Governor signed, a statute which again amended section 11155. It now reads as follows:

> "11155. In addition to the personal property permitted by other provisions of this part, an applicant or recipient, including an applicant for or recipient of aid to families with dependent children may retain items of personal property, other than cash, securities, instruments or other evidences of indebtedness, of a market value, *less encumbrances,* not to exceed one thousand dollars ($1,000), and in addition property falling within the following categories:
>
> 1. The entire value of wedding and engagement rings, heirlooms and clothing.
>
> 2. The reasonable value of household furnishings and, in addition, other property used to provide, equip and maintain a household for the applicant or recipient up to a market value, *less encumbrances,* of three hundred dollars ($300) for each item.
>
> 3. Equipment and material of reasonable value, including motor vehicles, which are necessary to implement an employment, rehabilitation or self-care plan necessary for employment of the applicant or recipient.
>
> 4. Any property right which is essential to land use or which is not available for the use of or expenditure by or in behalf of the applicant or recipient to meet a current or future need of the applicant or recipient.

> In addition to all of the foregoing the director may at his discretion exempt other items of personal property not exempted under this section." (Emphasis added.)

California Statutes 1973, Chapter 1216, Section 32. Attached as Appendix A is a true copy of the revised section as certified by the California Secretary of State.

Section 11155 no longer provides for the method of valuation as discussed in *Wheat v. Hall,* 32 Cal.App.3d 928, the subject of the Petition, and the State of California cannot administer section 11155 in accordance with that decision.

Section 11155 as amended by Chapter 1216, Statutes of 1973, now requires that the personal property items in question which may be retained by a public assistance applicant or recipient be evaluated on the basis of market value *less encumbrances.* This is precisely the result argued for in the court action and it renders Petitioners' claim moot. For the reason that this statutory change has rendered the action moot, the Petition should be denied.

2. The Respondents Have Not Acted to Enforce the Regulation in Issue by the Petition as It Was Enjoined by the Trial Court.

The regulation in question has not been implemented by the respondents so as to require this court to act. It was the amendment of section 11155 by the Welfare Reform Act that gave rise to these issues. The amendment became effective on October 1, 1970. The regulation implementing section 11155 as amended by the Welfare Reform Act was under study when this lawsuit was originally filed in the trial court. Attached as Appendix B is the Declaration of Lawrence W. Campbell which was considered by the trial court and which reflects the status of these regulations at that time. On February 11, 1971, the trial court issued a

temporary restraining order enjoining regulation EAS 42-207(d) insofar as it caused personal property to be valued without regard to encumbrances and resulted in the denial or termination of categorical public assistance benefits without regard to the personal property exemptions required by sections 11154, 11155 and 11257 of the California Welfare and Institutions Code.

On March 9, 1972, a preliminary injunction was granted by the trial court in the same language as the restraining order. A true and correct copy of the Preliminary Injunction is attached as Appendix C. The preliminary injunction remained in effect throughout the appeal and until the decision of the Court of Appeal became final on August 8, 1973. *Wheat v. Hall,* 32 Cal.App.3d 928.

The respondents have taken no action since August 8, 1973, to implement the decision of the Court of Appeal or to administer section 11155 so as to evaluate personal property at market value without regard to encumbrances. Consequently, from the date of the restraining order in February 1972 to and including this date and before (see Declaration of Mr. Campbell, Appendix B), the respondents have not acted inconsistently with the modifications made to section 11155 on December 5, 1973, and have acted consistently with the injunction of the trial court set forth in Appendix C.

CONCLUSION

As the Legislature has modified section 11155 of the California Welfare and Institutions Code so that the provisions interpreted by the court have in effect been repealed and as the respondents have administered it in the same manner since the inception of this lawsuit and before, the

matter is moot and the Petition for Writ of Certiorari should be denied on that ground.

Respectfully submitted,

EVELLE J. YOUNGER
Attorney General of the State of California

ELIZABETH PALMER
Assistant Attorney General

N. EUGENE HILL
Deputy Attorney General

Attorneys for Respondents

(Appendices follow)

Appendix A

Assembly Bill No. 134

Passed the Assembly December 5, 1973

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Passed the Assembly December 5, 1973

DARYL R. WHITE
Secretary of the Senate

This bill was received by the Governor this fifth day of December, 1973, at 4:30 o'clock p.m.

TIM R. COLE
Private Secretary of the Governor

CHAPTER 1216

An act to repeal Section 19524 of the Revenue and Taxation Code, to amend Sections 10551, 10559, 10800, 10950, 11006, 11006.1, 11006.3, 11006.5, 11008, 11008.8, 11008.9, 11009.1, 11010, 11012, 11018, 11020, 11050, 11052.5, 11061, 11062, 11150, 11155, 11203, 14005.1, 14008, 14109, 15151, 15201, and 15204.1 of, to add Sections 10813.1, 11005.5, 11063 to, Chapter 3 (commencing with Section 12000) and Chapter 4 (commencing with Section 12500) to Part 3 of Division 9 of, Sections 13004, 13058, 13059, 13060, 13061, 13062, 13063, 13064, 13065, 13066, 13067, 13068, 13103 to, Article 4 (commencing with Section 13150), Article 5 (commencing with Section 13200), Article 6 (commencing with Section 13250), and Article 7 (commencing with Section 13300) to Chapter 5 of Part 3 of Division 9 of, Chapter 6.5 (commencing with Section 13900) to Part 3 of Division 9 of, Sections 15151.5, and 15156 to, and Chapter 10 (commencing with Section 18900) to Part 6 of Division 9 of, and to repeal Sections 11011, 11056.1, 11058, 11059, 11060 of, Article 5 (commencing with Section 11170) and Article 6 (commencing with Section 11180) of Chapter 1 of Part 3 of Division 9 of, Chapter 3 (commencing with Section 12000), Chapter 4 (commencing with Section 12500), and Chapter 6 (commencing with Section 13500) of Part 3 of Division 9 of, Chapter 6.5 (commencing with Section 13900) of Part 3 of Division 9 of, Sections 15202, and 15204 of, and Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of, the Welfare and Institutions Code, to repeal Section 1 of Chapter 1084 of the Statutes of 1970, Section 599 of Chapter 1593 of the Statutes of 1971, and to amend Section 42.5 of Chapter 578 of the Statutes of 1971, and Section 2 of Chapter 1022 of the Statutes of 1972, relating to Public

Social Services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

AB 134, Burton. Public social services.

Deletes existing federally financed adult categorical aid and service programs and enacts the Burton-Moscone-Bagley Citizens Income Security for the Aged, Blind and Disabled, providing for the administration by the Secretary of Health, Education and Welfare of a supplementary payment of specified grants under Title XVI of the Social Security Act. Requires each county to pay a specified amount per year at its share of such program. Provides a separate county payment to persons ineligible due to the value of their home for such payment, and provides for deduction of such payment from the counties' share of aid. Provides relatives responsibility provisions.

Eliminates provisions prohibiting public assistance recipients from receiving the senior citizens property tax exemption operative July 1, 1974.

Revises the social service program for such recipients, provides for in-home supportive services for former, current and potential recipients, provides an additional grant to a severely impaired recipient or a severely impaired and indigent aged, blind or disabled individual, to purchase such service, if he so elects, and requires the state to fund in-home supportive services.

Revises provisions on out-of-home care in nonmedical care facilities.

Provides for a loan to meet the needs of aged, blind and disabled recipients under emergency circumstances when recipients' checks are not received and an aid payment in special circumstances for replacement of certain necessary items.

Establishes the Emergency Revolving Fund to reimburse the counties for the cost of uncollected loans and the administration thereof, which is appropriated for such purposes.

Revises formula for distribution of the amount received from the federal government for administration of services so that the counties receive at least 66 percent of the federal service funds, rather than at least one-half of the total federal funds for such administration, and allocates $5,000,000 from the state's share of such funds for the 1973-74 fiscal year to the counties for such purposes.

Provides for a continuous state appropriation to the department for allocation to the federal government to pay the amount of the state supplementary payment less any amounts due from the federal government under "hold harmless" provisions, and appropriates $65,000,000 from the Federal Revenue Sharing Fund to the General Fund to augment funds appropriated for such state supplementary payment. Provides for an appropriation to the Emergency Revolving Fund of $1,500,000 for emergency payments, as specified.

Requires the Department of Health to contract with the Secretary of Health, Education and Welfare to determine Medi-Cal eligibility for aged, blind or disabled individuals.

Provides that Medi-Cal needs for persons under the federal health insurance program for the aged and disabled include any cost sharing, except for individuals ineligible for such federal program prior to July 1, 1973.

Requires exemption of the market value of certain personal property items to be less encumbrances for purposes of certain public assistance programs.

Increases aid to potentially self-supporting blind grant for attendant care from $300 to $450 per month.

Limits liability under Medi-Cal of responsible relatives for noncategorically related needy persons to the spouse of an adult or a parent of a minor.

Revises the food stamp program in implementation of recent amendments to the Food Stamp Act of 1964 and effective July 1, 1974, provides for a continuing appropriation from the General Fund for the nonfederal share of administrative costs above county costs in the calendar year 1973.

Provides that neither appropriation is made nor obligation created for reimbursement of any local agencies for any costs incurred by it pursuant to the act.

To become operative on January 1, 1974, or a later date if the operation of Title XIV of the Social Security Act is delayed.

To take effect immediately, urgency statute.

The people of the State of California do enact as follows:

* * *

SEC. 31. Section 11150 of the Welfare and Institutions Code is amended to read:

11150. It is the intent of this article to set forth the amount of personal or real property, or both, which an applicant for or recipient of public assistance may retain and remain eligible to receive public assistance provided he meets the other eligibility requirements for the category of public assistance for which he is an applicant or recipient.

In the formulation of any regulations pursuant to this article and in the administration thereof, consideration shall be given to the ability and circumstances of the applicant or recipient in order that undue hardship is not imposed upon any applicant or recipient in making plans

to comply with the provisions of this article. No applicant or recipient shall be considered ineligible for retaining property where disposition would alter or impair reasonable access to or the normal use of his home.

This article does not apply to aid to families with dependent children or Chapter 3 (commencing with Section 12000) of this part, unless otherwise expressly indicated.

SEC. 32. Section 11155 of the Welfare and Institutions Code is amended to read:

11155. In addition to the personal property permitted by other provisions of this part, an applicant or recipient, including an applicant for or recipient of aid to families with dependent children may retain items of personal property, other than cash, securities, instruments or other evidences of indebtedness, of a market value, less encumbrances, not to exceed one thousand dollars ($1,000), and in addition property falling within the following categories:

1. The entire value of wedding and engagement rings, heirlooms and clothing.

2. The reasonable value of household furnishings and, in addition, other property used to provide, equip and maintain a household for the applicant or recipient up to a market value, less encumbrances, of three hundred dollars ($300) for each item.

3. Equipment and material of reasonable value, including motor vehicles, which are necessary to implement an employment, rehabilitation or self-care plan necessary for employment of the applicant or recipient.

4. Any property right which is essential to land use or which is not available for the use of or expenditure by or in behalf of the applicant or recipient to meet a current or future need of the applicant or recipient.

In addition to all of the foregoing the director may at his discretion exempt other items of personal property not exempted under this section.

• • •

SEC. 79. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order to implement the state supplementary payment program provided by this act including the authorization for federal administration of the supplementary payment by January 1, 1974, it is necessary that this act take immediate effect.

BOB MORETTI
Speaker of the Assembly

JAMES R. MILLS
President of the Senate

Approved 12-5, 1973

ED REINECKE
Governor

[Endorsed]: Filed in the office of the Secretary of State of the State of California December 5, 1973 at 5:30 o'clock P.M.

EDMUND G. BROWN JR.,
Secretary of State

By YVONNE J. MARSTON
Deputy Secretary of State

State of California

[Seal]

Office of the
Secretary of State

I, Edmund G. Brown Jr., Secreetary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the RECORD on file in this office, of which it purports to be a copy, and that same is full, true and correct.

In Witness Whereof, I execute this certificate and affix the Great Seal of the State of California this 5th day of December, 1973

[Seal]

EDMUND G. BROWN JR.
Secretary of State

Appendix B

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Attorneys for Defendants

Superior Court of the State of California
for the County of Los Angeles

No. .....

Louie P. Wheat, et al.,
Plaintiffs,

James M. Hall, as Secretary, etc., et al.,
Defendants.

DECLARATION OF LAWRENCE W. CAMPBELL

I, Lawrence W. Campbell, declare:

1. I am an Associate Counsel with the Department of Social Welfare of the State of California, assigned to the Legal Affairs Division. In the scope of my employment I am familiar with the regulations concerned in this action.

2. Eligibility and Assistance Standards Manual ("EAS") Section 42-207(d), currently in effect, has been under study and revision for the past several weeks by the State Department of Social Welfare ("SDSW").

3. Proposed revisions have been twice submitted to county welfare department representatives and their comments noted and considered.

4. The revisions as now finalized to EAS Section 42-207(d) will not cause any person with in individual item of household furnishings or related personal property with

a market value over $300 to be declared ineligible solely because such value exceeds $300. Such personal property will be included in the general personal property reserve and a person declared ineligible for aid only if the market value of such item together with other items considered under the general personal property reserve exceeds $1000.

5. It is anticipated that these revised regulations will be filed with the Secretary of State within four to six weeks.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California, on February 11, 1972.

LAWRENCE W. CAMPBELL

Appendix C

[Endorsed]: Filed Mar 14 1972
WILLIAM G. SHARP, *County Clerk*
By D. E. WILLIAMS, *Deputy*

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Attorneys for Plaintiffs

Superior Court of the State of California
for the County of Los Angeles

No. 22662

Louie P. Wheat, Vernie Graves, Maxine Graves, and Moddie Carrillo, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

James M. Hall, Secretary, Human Relations Agency, State of California; Robert B. Carleson, Director, Department of Social Welfare, State of California,

Defendants.

PRELIMINARY INJUNCTION

The application of plaintiffs for a Preliminary Injunction came on regularly to be heard on Monday, February 28,

1972, and Wednesday, March 8, 1972, before the Honorable Robert A. Wenke, Judge Presiding, pursuant to an Order to Show Cause issued by this Court on February 11, 1972. Daniel S. Brunner, Valerie Vanaman and Craig H. Scott appearing as counsel for plaintiffs; Evelle J. Younger, Attorney General, by Jerald A. Prod, Deputy Attorney General, appearing as counsel for defendants.

Written and documentary evidence having been admitted, and oral and written argument having been made, and proof having been made to the satisfaction of the Court, and the Court being fully advised in the premises, and good cause appearing therefor:

IT IS HEREBY ORDERED that during the pendency of this action, in order to maintain the status quo, the defendants, and each of them, and their officers, agents, employees, representatives and all persons acting in concert or participating with them, shall be and they are hereby restrained and enjoined from:

> Taking any action whatsoever which would result in the denial or termination of public assistance benefits under any category of aid pursuant to EAS Manual § 42-207(d): (a) insofar as said Section values personal property without regard to encumbrances, and (b) insofar as said Section results in the denial or termination of public assistance benefits without regard to the personal property exemptions required by Welfare and Institutions Code §§ 11154, 11155 and 11257.

IT IS FURTHER ORDERED that the undertaking required by Code of Civil Procedure Section 529 is hereby waived pursuant to the stipulation of the parties through their respective counsel.

Dated: March 14, 1972.

ROBERT A. WENKE
Judge of the Superior Court

DW